



## Final Regulation Agency Background Document

<b>Agency name</b>	DPOR/Board for Professional Soil Scientists (which as of July 1, 2004, will become the Board for Professional Soil Scientists and Wetland Professionals)
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 145-30
<b>Regulation title</b>	Certified Professional Wetland Delineator Regulations
<b>Action title</b>	Promulgating
<b>Document preparation date</b>	December 24, 2003

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style, and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

Chapter 784 of the Acts of the 2002 General Assembly, which was a result of Senate Bill 61 (“The Bill”), created a regulatory program to certify professional wetland delineators. The Bill assigned the regulatory program to the Virginia Board for Professional Soil Scientists; changed the Board’s name to the Virginia Board for Professional Soil Scientists and Wetland Professionals; and changed the Board’s membership to reflect the new program. The Bill assigned the administration and support of the certified professional wetland delineators program to the Department of Professional and Occupational Regulation.

The new board came into effect on July 1, 2002 and is mandated, pursuant to the Bill, to implement the regulatory program by July 1, 2004. This will be the first set of regulations for certified professional wetland delineators. There are no existing regulations to amend. The regulations are intended to define: 1) Definitions of terms to be used in the regulations; 2) Entry

standards for those seeking to practice as a certified professional wetland delineators; 3) Renewal and reinstatement standards for regulants; 4) Standards of practice and conduct; and 5) Grounds for disciplinary action against regulants. Other regulations which may be necessary will be considered.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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On November 21, 2003, the Board for Professional Soil Scientists (which as of July 1, 2004, will become the Board for Professional Soil Scientists and Wetland Professionals) adopted Final Regulations Governing Certified Professional Wetland Delineators.

### Legal basis

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

*If the final text differs from the text at the proposed stage, please indicate whether the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

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The Board's authority to promulgate regulations for certified professional wetland delineators may be found in § 54.1-201 and § 54.1-2203 of the Code of Virginia. The provisions of § 54.1-2203 shall become effective on July 1, 2004. These two sections of the Code mandate the Board to promulgate regulations for the certification of professional wetland delineators concerning qualifications of applicants, examination of applicants and the proper conduct of certified professional wetland delineators.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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§ 54.1-201 and § 54.1-2203 of the Code of Virginia mandate the Board to promulgate regulations for the certification of professional wetland delineators concerning qualifications of applicants, examination of applicants and the proper conduct of certified professional wetland delineators. As the General Assembly has mandated the Board to promulgate the regulations for this program to protect the health, safety and welfare of the public, the Board is complying with the statutory mandate.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

These regulations are necessary to implement Chapter 784 of the Acts of the 2002 General Assembly, which was a result of Senate Bill 61, and to create the regulatory program therein mandated to protect the health, welfare and safety of the public when dealing with persons practicing as a certified professional wetland delineator.

The regulations are intended to:

- 1) Definitions of terms to be used in the regulations;
- 2) Entry standards for those seeking to practice as a certified professional wetland delineators;
- 3) Renewal and reinstatement standards for regulants;
- 4) Standards of practice and conduct; and
- 5) Grounds for disciplinary action against regulants.

Other regulations which may be necessary will be considered.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If there are no disadvantages to the public or the Commonwealth, please indicate.*

The advantage to the public is that they will know have a way of identifying wetland delineators who have met the standards set forth by the Board for certification. The only potential disadvantage is that the cost of the voluntary certification program may be passed on from the certificate holders to the public; however, the cost of the program is relatively small.

## Changes made since the proposed stage

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.*

18 VAC 145-30-50 – clarify the regulation to more accurately reflect the Board’s intent with regards to experience.

18 VAC 145-30-50.2 – increase the number of reports that have been reviewed from 10 to 30 and include the requirement that the review be performed as an employee of a federal, state or local governmental body which is authorized to review or approve such reports.

18 VAC 145-30-60.A.3 – correct typographical error in a course title from “popular dynamics” to “population dynamics.”

18 VAC 145-30-60.B – reduce the required length of the course in state and federal wetland delineation methods from 40 hours to 32 hours.

18 VAC 145-30-70.D and E – two new sections added as the Department will be administering the examination for the Board instead of a vendor.

18 VAC 145-30-80.1 – include a provision from § 54.1-2206.B (effective July 1, 2004) of the *Code of Virginia* which was inadvertently omitted through which an applicant could gain a certificate without examination.

18 VAC 145-30-80 – clarify the language regarding the waiver of examination provision.

18 VAC 145-30-90 – Add fee for examination as the Department will be administering the examination for the Board instead of a vendor.

18 VAC 145-30-110.A – change “mail” to “send” to allow flexibility in sending renewal notices (this change would allow the Department to send renewal notices via e-mail instead of through the USPS).

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

Summary of comments received during public comment period (August 25, 2003 - October 24, 2003, with a public hearing held on October 10, 2003) regarding the Proposed Regulations Governing Certified Wetland Delineators. During the public comment period and public hearing, the Board received the following comments from ten parties. On November 21, 2003, the Board considered the comments and adopted the following responses:

#	REGULATION #	SUMMARY OF COMMENT(S)
	COMMENTOR'S NAME	BOARD RESPONSE

#	REGULATION #	SUMMARY OF COMMENT(S)
	COMMENTOR'S NAME	BOARD RESPONSE
1	18 VAC 145-30-80.1	The waiver from examination provisions (18 VAC 145-30-80) does not include one of the qualifications for waiving the examination as stipulated in § 54.1-2206.B of the <i>Code of Virginia</i> (being certified under the US Army Corps of Engineers Wetland Certification Program of 1993).
	Michael S. Rolband via letter and testimony by Patrick O’Hare, Esq., on behalf of Mr. Rolband, at the public hearing on October 10, 2003.	Concur with the suggested change – 18 VAC 145-30-80 will be amended to include this provision of the <i>Code of Virginia</i> .
2	18 VAC 145-30-50.1 & 18 VAC 145-30-50.2	The draft regulations permit the required experience to be gained by preparing, or reviewing, ten reports; however, the preparation of a report requires more effort than reviewing a report. Therefore, the number of reports required to be reviewed should be increased to 100 to equate to the preparation of 10 reports.
	Michael S. Rolband via letter and testimony by Patrick O’Hare, Esq., on behalf of Mr. Rolband, at the public hearing on October 10, 2003.	Partially concur – the requirements for acceptable experience gained through reviewing reports should be revised to increase the number of reports reviewed (not to 100 though) and that the review be conducted as an employee of a federal, state or local governmental body which is authorized to review or approve such reports.
3	18 VAC 145-30-10	Write out the definitions of “tidal wetlands” and “non-tidal wetlands” instead of referencing the part of the <i>Code of Virginia</i> which contain these definitions (§ 28.2-1300).
	Brenda K. Winn via letter	Do not concur with the suggested change - § 5.15 of the <i>Virginia Register Form, Style and Procedure Manual</i> indicates that citations to the <i>Code of Virginia</i> should be done by the numeric citation to the <i>Code</i> section. This ensures that the provisions of the <i>Code</i> section are not inadvertently altered in the process of inclusion in the regulations and ensures that the definition in the regulations does not become inconsistent with the provisions of the <i>Code</i> if the <i>Code</i> is amended at a later date.
4	18 VAC 145-30-40	Concern over the requirement for X years of experience under certified wetland delineator when there will be few individuals who will qualify under the grandfather provisions in order to supervise those who do not qualify under the waiver provisions.

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	COMMENTOR'S NAME	BOARD RESPONSE
	Brenda K. Winn via letter	Do not concur with the suggested change - the experience requirements contained in the Board's regulations are consistent with the provisions of Chapter 22 of Title 54.1 of the <i>Code of Virginia</i> .
5	18 VAC 145-30-50.1	Concern over being able to verify experience gained as an employee of a firm for which no author-credit was given to the employee by the firm for doing such work.
	Brenda K. Winn via letter	Concur – the Board will ensure that its application will allow adequate verification of experience by third parties in order to ensure that the applicant is given credit for work performed even if no author credit was given for the work.
6	18 VAC 145-30-60.B	What if the course of instruction in state and federal wetland delineation methods is actually 36 hours long and not 40 hours long?
	Brenda K. Winn via letter	The Board has altered this requirement to a 32 hour course as it believes that a 32 hour long course is adequate to properly cover the necessary topics.
7	18 VAC 145-30-90	Note that the renewal fee covers a two-year period.
	Brenda K. Winn via letter	Do not concur with the suggested change - the terms of the certifications are noted in 18 VAC 145-30-100.
8	18 VAC 145-30-40 & 18 VAC 145-30-50	Take the statute back to General Assembly in the next legislative session for revision to allow certification at different levels so that the entry standards do not artificially exclude competent wetland delineators from practicing.

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	Joseph J. Campo via letter	Do not concur with the suggestion: (1) First, the program is a voluntary certification program and no one would be prevented from working as a wetland delineator who is not certified by the Board (they could not use the title of "Virginia certified professional wetland delineator"). (2) Second, §§ 54.1-2203 and 54.1-2206.1 (effective July 1, 2004) of the <i>Code of Virginia</i> require the regulations for the professional wetland delineator certification program to be in place by July 1, 2004, which does not allow sufficient time to amend the law and promulgate the required regulations by July 1, 2004. Further, the content of the statutes is established by the General Assembly and not the Board; the proposed regulations the Board has adopted are, therefore, constrained by what the statutes permit. Almost all of the entry standards are specified by statute (Chapter 22 of Title 54.1) so the Board has very little discretion in crafting the entry standards.
9	18 VAC 145-30-90	Cost for the program seems high.
	Joseph J. Campo via letter	Do not concur with the comment - the cost of the program is dictated by the anticipated expenses of the program as required by §§ 54.1-113 and 54.1-201.4 of the <i>Code of Virginia</i> . If the actual costs of the program are different, the Board will adjust its fees in the future to more accurately reflect the cost of the program.
10	18 VAC 145-30-50.1	<p>Better define type of experience required to be grandfathered – verification of ten years of experience, producing ten reports with three confirmations does not demonstrate competency.</p> <p>The requirement for copies of ten reports should be dropped completely.</p> <p>Applicants should not have to provide copies of reports as it is impractical (costly, confidential, and supervisor could take credit for reports prepared by staff person).</p> <p>The Board should only require a list of recent delineations they performed field-work on, descriptions of the type and size of each delineation, and name and contact information for the regulator who knows of their work on the project.</p>

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	Robin L. Bedenbaugh via letter and testimony at the public hearing on October 10, 2003.	Do not concur with the suggested change - § 54.1-2206.2 of the <i>Code of Virginia</i> - the Board must clearly and unambiguously spell out its requirements in its regulations so that applicants know what the standard is and the Board has a defined standard by which to evaluate the applications (otherwise it increases the risk that the Board would make decisions which could be seen as arbitrary and capricious). Further, the Board's regulations do not require copies of ten reports; rather, acceptable documentation of having performed the required number of delineations.
11	18 VAC 145-30-50.3	Narrow the group of educators and researchers who would be eligible for grandfathering
	Robin L. Bedenbaugh via letter and testimony at the public hearing on October 10, 2003.	Do not concur with the suggested change - § 54.1-2206.2 A.3 of the <i>Code of Virginia</i> permits the certification of educators and researchers – the Board believes that there are individuals who are minimally competent in wetland delineation and whose employment has been in the area of education and/or research.
12	18 VAC 145-30-50.2	Eliminate the option for individuals who have reviewed ten reports to be certified.
	Robin L. Bedenbaugh via letter and testimony at the public hearing on October 10, 2003.	Do not concur with the suggested change – the Board believes that there are individuals who are minimally competent in wetland delineation and whose employment has been in the area of ensuring that practitioners who prepare wetland delineations have done them correctly and in accordance with established standards.
13	18 VAC 145-30-90	Cost for the program seems high.
	Robin L. Bedenbaugh via letter and testimony at the public hearing on October 10, 2003.	Do not concur with the comment - the cost of the program is dictated by the anticipated expenses of the program as required by §§ 54.1-113 and 54.1-201.4 of the <i>Code of Virginia</i> . If the actual costs of the program are different, the Board will adjust its fees in the future to more accurately reflect the cost of the program.
14	All	Take the statute back to General Assembly in the next legislative session for revision.

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	Meegan Wallace via letter	Do not concur with the suggestion: (1) First, the program is a voluntary certification program and no one would be prevented from working as a wetland delineator who is not certified by the Board (they could not use the title of "Virginia certified professional wetland delineator"). (2) Second, §§ 54.1-2203 and 54.1-2206.1 (effective July 1, 2004) of the <i>Code of Virginia</i> require the regulations for the professional wetland delineator certification program to be in place by July 1, 2004, which does not allow sufficient time to amend the law and promulgate the required regulations by July 1, 2004. Further, the content of the statutes is established by the General Assembly and not the Board; the proposed regulations the Board has adopted are, therefore, constrained by what the statutes permit. Almost all of the entry standards are specified by statute (Chapter 22 of Title 54.1) so the Board has very little discretion in crafting the entry standards.
15	18 VAC 145-30-90	Cost for the program seems high.
	Meegan Wallace via letter	Do not concur with the comment - the cost of the program is dictated by the anticipated expenses of the program as required by §§ 54.1-113 and 54.1-201.4 of the <i>Code of Virginia</i> . If the actual costs of the program are different, the Board will adjust its fees in the future to more accurately reflect the cost of the program.

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16	18 VAC 145-30-50	<p>Accept letters of competency, confirmation of judgment, etc from various accepted sources including, but not limited to, VIMS, USACOE, Society of Wetland Scientist-certified PWS's, researchers. Accept recognition by the courts of expert qualifications as supporting evidence of proficiency. These pieces of corroborating evidence would be especially valuable for governmental employees, like myself, who perform hundreds of delineations every year for actions which are not reviewed by other agencies, i.e.:</p> <p>(1) Tidal and nontidal wetland delineations for the establishment of Chesapeake Bay Preservation Act (upland) buffers;</p> <p>(2) Tidal and Nontidal wetland delineations to determine the necessary landward terminus of an open pile piers. These structures qualify for exemptions or regional permits under state and/or federal programs. For other projects that qualify for USACOE regional permits, similar circumstances would apply;</p> <p>(3) Tidal and nontidal delineations to conduct enforcement actions; and</p> <p>(4)Tidal and nontidal wetland delineations for the purpose of creating or expanding wetlands.</p>
	Kevin Du Bois via e-mail letter	<p>Do not concur with the suggested change – the Board must clearly and unambiguously spell out its requirements in its regulations so that applicants know what the standard is and the Board has a defined standard by which to evaluate the applications (otherwise it increases the risk that the Board would make decisions which could be seen as arbitrary and capricious).</p>
17	18 VAC 145-30-80	<p>Accept the Society of Wetlands Scientist PWS certification as proof of competency and add them to the list that would exempt a candidate from the examination requirement in 18 VAC 145-30-80.</p>
	Kevin Du Bois via e-mail letter	<p>Do not concur with the suggested change – it is up to the Board to determine the standards which must be met to ensure minimal competency. The Board cannot turn over this responsibility to another organization as the authority provided by statute rests with Board. The provisions for waiver of examination as contained in 18 VAC 145-30-80 are based on § 54.1-2206.B of the Code and the Board does not have the authority to alter these criteria.</p>

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	COMMENTOR'S NAME	BOARD RESPONSE
18	N/A	Require documentation of continuing education for recertification.
	Kevin Du Bois via e-mail letter	Do not concur with the suggested change – the Board does not have explicit authority to implement mandatory continuing education. Nor has any harm been proven which continuing education would effectively remedy.
19	18 VAC 145-30-50.2	To provide for the proper verification of delineations in atypical or problem wetlands, where some or all of the wetland indicators are missing (through unauthorized activities or natural events, or from the establishment of newly created wetlands), line 6 of Section 18VAC145-30-50(2) should be amended to say "...proper identification of vegetation and/or soils and/or hydrology indicators as applicable."
	Kevin Du Bois via e-mail letter	Do not concur with the suggested change – this change would allow an applicant submit proof of experience of one of the three indicators as applicable. The Board is required to ensure that an applicant is minimally competent in all areas of wetland delineation. Any exceptional cases will be dealt with on a case by case basis based on the facts of that situation.
20	18 VAC 145-30-50.1	Require experience that is being verified by state or federal regulatory bodies be signed by Certified Professional Wetland Delineators.
	Kevin Du Bois via e-mail letter	Do not concur with the suggested change – state or federal regulatory bodies are going to review delineations for compliance with appropriate state or federal law and/or regulations for which certification is not mandated.
21	§ 54.1-2201.A of the <i>Code of Virginia</i> effective July 1, 2004	Make certification mandatory.
	Kevin Du Bois via e-mail letter	Do not concur with the suggested change – the General Assembly decided that this profession was to be regulated as a voluntary certification program and the Board does not have the authority to alter the statute.

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	COMMENTOR'S NAME	BOARD RESPONSE
22	18 VAC 145-30-50	Requirement for preparation of at least 10 wetland delineation reports (of which 6 must be for non-tidal wetlands and 3 must have confirmation letters from appropriate regulatory bodies) appears to go beyond the requirements of the statute and is problematic for VDOT employees and others to meet and should be eliminated. If anything, a work history, academic background and letters of reference should meet the Board's needs determining suitable experience.
	Leo Snead, Jr., via letter, on behalf of VDOT	Do not concur with the suggested change – § 54.1-2206.2 of the <i>Code of Virginia</i> - the Board must clearly and unambiguously spell out its requirements in its regulations so that applicants know what the standard is and the Board has a defined standard by which to evaluate the applications (otherwise it increases the risk that the Board would make decisions which could be seen as arbitrary and capricious).
23	18 VAC 145-30-60	Questions the suitability of including popular dynamics as part of the educational course requirements. Further this entire regulation does not appear of value beyond that already contained in 18 VAC 145-30-40 and should be deleted.
	Leo Snead, Jr., via letter, on behalf of VDOT	Do not concur with the suggested change – the correct course that was meant to be included was “population dynamics” and not “popular dynamics” – this course is included as it is a quantitative science course which someone who has obtained a bachelors degree in any similar biological, physical, natural science or environmental engineering curriculum may have completed. This regulation specifies the requirements under which the Board will consider approving “...a bachelors degree in any similar biological, physical, natural science or environmental engineering curriculum.” In addition, this regulation also specifies the requirements under which the Board will consider approving “...a course of instruction in state and federal wetland delineation methods” as required by § 54.1-2206.2 A.1 of the <i>Code of Virginia</i> .
24	18 VAC 145-30-90	Cost for the program seems high and the estimated number of regulants appears too low which could increase the fee structure which would cause individuals to not become certified.

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	COMMENTOR'S NAME	BOARD RESPONSE
	Leo Snead, Jr., via letter, on behalf of VDOT	Do not concur with the comment - the cost of the program is dictated by the anticipated expenses of the program as required by §§ 54.1-113 and 54.1-201.4 of the <i>Code of Virginia</i> . If the actual costs of the program are different, the Board will adjust its fees in the future to more accurately reflect the cost of the program.
25	§ 54.1-2206.2.A of the <i>Code of Virginia</i> effective July 1, 2004	Revise § 54.1-2206.2.A of the <i>Code of Virginia</i> to fix the inadvertent error related to experience under the supervision of a certified wetland delineator (after the two year grandfather period ends, candidates are then required to have worked for a certified wetland delineator for four years and yet the program will have only been in effect for two years).
	Leo Snead, Jr., via letter, on behalf of VDOT	The content of the statutes is established by the General Assembly and not the Board; the proposed regulations the Board has adopted are, therefore, constrained by what the statutes permit.
26	18 VAC 145-30-50	Requirement for preparation of at least 10 wetland delineation reports (of which 6 must be for non-tidal wetlands and 3 must have confirmation letters from appropriate regulatory bodies) appears to go beyond the requirements of the statute and is problematic for VDOT employees and others to meet and should be eliminated. If anything, a work history, academic background and letters of reference should meet the Board's needs determining suitable experience.
	Leo Snead, Jr., via letter, on behalf of VAWP	Do not concur with the suggested change – § 54.1-2206.2 A of the Code of Virginia specifies the experience requirements § 54.1-2206.1 of the Code of Virginia permits the Board to promulgate regulations regarding educational and experience requirements. In carrying out its duty, the Board must clearly and unambiguously spell out its requirements in its regulations so that applicants know what the standard is and the Board has a defined standard by which to evaluate the applications (otherwise it increases the risk that the Board would make decisions which could be seen as arbitrary and capricious).
27	18 VAC 145-30-60	This entire regulation does not appear of value beyond that already contained in 18 VAC 145-30-40 and should be deleted.

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	Leo Snead, Jr., via letter, on behalf of VAWP	Do not concur with the suggested change – this regulation specifies the requirements under which the Board will consider approving “...a bachelors degree in any similar biological, physical, natural science or environmental engineering curriculum.” In addition, this regulation also specifies the requirements under which the Board will consider approving “...a course of instruction in state and federal wetland delineation methods” as required by § 54.1-2206.2 A.1 of the <i>Code of Virginia</i> .
28	18 VAC 145-30-90	Cost for the program seems high and the estimated number of regulants appears too low which could increase the fee structure which would cause individuals to not become certified.
	Leo Snead, Jr., via letter, on behalf of VAWP	Do not concur with the comment - the cost of the program is dictated by the anticipated expenses of the program as required by §§ 54.1-113 and 54.1-201.4 of the <i>Code of Virginia</i> . If the actual costs of the program are different, the Board will adjust its fees in the future to more accurately reflect the cost of the program.
29	§ 54.1-2206.2.A of the <i>Code of Virginia</i> effective July 1, 2004	Revise § 54.1-2206.2.A of the <i>Code of Virginia</i> to fix the inadvertent error related to experience under the supervision of a certified wetland delineator (after the two year grandfather period ends, candidates are then required to have worked for a certified wetland delineator for four years and yet the program will have only been in effect for two years).
	Leo Snead, Jr., via letter, on behalf of VAWP	The content of the statutes is established by the General Assembly and not the Board; the proposed regulations the Board has adopted are, therefore, constrained by what the statutes permit.
30	N/A	Modify the program to address the need to train state, local and federal government employees in the practice of wetland delineation.
	Glenda C. Booth via letter	Do not concur with the suggested change – the role of the Board is to protect the health, safety and welfare of the public through administering a regulatory program; not to provide training for government employees in the practice of wetland delineation.

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31	N/A	§ 54.1-2206.B of the <i>Code of Virginia</i> , effective July 1, 2004, permits individuals who have 10 years or more of experience to waive the requirement to pass an examination without any proof of education. This puts many qualified wetland delineators at a disadvantage. In addition, a disregard for advance studies or degrees appears evident. Modify regulations to grandfather those with 6 years of experience along with proof of state and federal wetland delineation methodologies course. In addition, make provisions for those individuals with graduate degrees. The criteria for which the staff at DEQ can be grandfathered are flawed – all members of DEQ should be required to pass an examination.
	Thaddeus Kraska, Robert Smiley, and John Brooks via letter	The content of the statutes is established by the General Assembly and not the Board; the proposed regulations the Board has adopted are, therefore, constrained by what the statutes permit. In addition, the experience requirements set forth in § 54.1-2206.B of the <i>Code of Virginia</i> effective July 1, 2004, are not specifically for the staff of DEQ. Any individual who meets the grandfather requirements of § 54.1-2206.B of the <i>Code</i> , which are intended to allow longstanding practitioners who are minimally competent to be brought into the regulatory program without undue burden, would be granted certification. The experience submitted by grandfather applicants will be evaluated against the regulations in order to ensure that they possess adequate experience and skills to be minimally competent.

The Board has decided to review its statutes relating to this program at a future meeting in light of the comments received on the proposed regulations.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

These regulations are necessary to implement Chapter 784 of the Acts of the 2002 General Assembly, which was a result of Senate Bill 61, and to create the regulatory program therein mandated to protect the health, welfare and safety of the public when dealing with persons practicing as a certified professional wetland delineator.

The regulations are intended to:

- 1) Definitions of terms to be used in the regulations;
- 2) Entry standards for those seeking to practice as a certified professional wetland delineators;
- 3) Renewal and reinstatement standards for regulants;
- 4) Standards of practice and conduct; and
- 5) Grounds for disciplinary action against regulants.

Other regulations which may be necessary will be considered.

### Impact on family

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

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No impact on families in Virginia has been identified as resulting from the proposed regulations.